

# **Texas Occupational Therapy Practice Act**

**Title 3, Subtitle H, Chapter 454, Occupations Code**

## **Executive Council of Physical Therapy and Occupational Therapy Examiners**

**Title 3, Subtitle H, Chapter 454, Occupations Code**



**Texas Board of  
Occupational Therapy Examiners  
Austin, Texas**

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Texas Board of Occupational Therapy Examiners

333 Guadalupe, Suite 2-510  
Austin, Texas 78701-3942  
512/305-6900  
(Fax) 512/305-6951  
(Fax) 512/305-6970  
Website: <http://www.ecptote.state.tx.us>



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## **CHAPTER 454.OCCUPATIONAL THERAPISTS**

### ***SUBCHAPTER A. GENERAL PROVISIONS***

#### **§454.001. SHORT TITLE.**

This chapter may be cited as the Occupational Therapy Practice Act.  
Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **§454.002. DEFINITIONS.**

In this chapter:

- (1) "Board" means the Texas Board of Occupational Therapy Examiners.
- (2) "Coordinator of occupational therapy programs" is the person employed in that position under §452.101.
- (3) "Executive council" means the Executive Council of Physical Therapy and Occupational Therapy Examiners.
- (4) "Occupational therapist" means a person licensed to practice occupational therapy.
- (5) "Occupational therapy aide" means a person:
  - (A) who aids in the practice of occupational therapy; and
  - (B) whose activities require on-the-job training and on-site supervision by an occupational therapist or an occupational therapy assistant.
- (6) "Occupational therapy assistant" means a person licensed by the board as an occupational therapy assistant who assists in the practice of occupational therapy under the general supervision of an occupational therapist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **§454.003. APPLICATION OF SUNSET ACT.**

The Texas Board of Occupational Therapy Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2013.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1112, Sec. 3.08, eff. Sept. 1, 2003. Amended by: Acts 2007, 80th Leg., R.S., Ch. 928, Sec. 4.07, eff. June 15, 2007.

#### **§454.004. CONFLICT WITH OTHER LAW.**

To the extent of any conflict between this chapter and Chapter 452, Chapter 452 controls.  
Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **§454.005. APPLICABILITY.**

- (a) This chapter does not apply to a holder of a license issued by another state agency who is performing health care services within the scope of the applicable licensing act.
- (b) The licensing provisions of this chapter do not apply to:
  - (1) an occupational therapy aide assisting a license holder under this chapter;

- (2) a person engaged in a course of study leading to a degree or certificate in occupational therapy at an accredited or approved educational program if:
  - (A) the activities and services constitute a part of a supervised course of study; and
  - (B) the person is designated by a title that clearly indicates the person's status as a student or trainee;
- (3) a person fulfilling the supervised field work experience requirements of §454.203, if those activities and services constitute a part of the experience necessary to meet the requirement of that section;
- (4) an occupational therapist performing a special project in patient care while working toward an advanced degree from an accredited college or university;
- (5) an occupational therapist who does not live in this state and who:
  - (A) is licensed by another state or who meets the requirements for certification established by the American Occupational Therapy Association as an occupational therapist registered (OTR) or a certified occupational therapy assistant (COTA); and
  - (B) comes into this state for not more than four consecutive months to:
    - (i) provide or attend an educational activity;
    - (ii) assist in a case of medical emergency; or
    - (iii) engage in a special occupational therapy project; or
- (6) a qualified and properly trained person acting under a physician's supervision under Section 157.001.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

#### **§454.006. PRACTICE OF OCCUPATIONAL THERAPY.**

- (a) In this section, "diagnosis" means the identification of a disease from its symptoms.
- (b) A person practices occupational therapy if the person:
  - (1) evaluates or treats a person whose ability to perform the tasks of living is threatened or impaired by developmental deficits, the aging process, environmental deprivation, sensory impairment, physical injury or illness, or psychological or social dysfunction;
  - (2) uses therapeutic goal-directed activities to:
    - (A) evaluate, prevent, or correct physical or emotional dysfunction; or
    - (B) maximize function in a person's life; or
  - (3) applies therapeutic goal-directed activities in treating patients on an individual basis, in groups, or through social systems, by means of direct or monitored treatment or consultation.
- (c) The practice of occupational therapy does not include diagnosis or psychological services of the type typically performed by a licensed psychologist.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

#### **§454.007. USE OF TITLE OF DOCTOR.**

An occupational therapist or occupational therapy assistant may not use the abbreviation "Dr.," the word "Doctor," or any suffix or affix indicating or implying that the person is a physician.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**SUBCHAPTER B. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS****§454.051. BOARD MEMBERSHIP.**

- (a) The Texas Board of Occupational Therapy Examiners consists of nine members appointed by the governor with the advice and consent of the senate as follows:
- (1) four occupational therapist members who have practiced occupational therapy for at least the three years preceding appointment to the board;
  - (2) two occupational therapy assistant members, each of whom has practiced as an occupational therapy assistant for at least the three years preceding appointment to the board; and
  - (3) three members who represent the public and who are not occupational therapists.
- (b) Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointee.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.211(a), eff. Sept. 1, 2001.*

**§454.052. PUBLIC MEMBER ELIGIBILITY.**

A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

- (1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;
- (2) is employed by or participates in the management of a business entity or other organization regulated by the executive council or the board or that receives funds from the executive council or the board;
- (3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the executive council or the board or that receives funds from the executive council or the board; or
- (4) uses or receives a substantial amount of tangible goods, services, or funds from the executive council or the board, other than compensation or reimbursement authorized by law for executive council or board membership, attendance, or expenses.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**§454.053. MEMBERSHIP RESTRICTIONS.**

- (a) In this section, "Texas trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.
- (b) An officer, employee, or paid consultant of a Texas trade association in the field of health care may not be a member of the board.
- (c) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of health care may not be a member of the board.
- (d) A person may not serve as a member of the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the executive council or the board.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

#### **§454.054. TERMS; VACANCY.**

- (a) Members of the board serve staggered six-year terms, with the terms of two members licensed under this chapter and one member who represents the public expiring on February 1 of each odd-numbered year.
- (b) If a vacancy occurs during a member's term, the governor shall appoint a replacement to fill the unexpired term.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.211(b), eff. Sept. 1, 2001.*

#### **§454.055. GROUNDS FOR REMOVAL.**

- (a) It is a ground for removal from the board that a member:
  - (1) does not have at the time of appointment the qualifications required by §454.051(a);
  - (2) does not maintain during service on the board the qualifications required by §454.051(a);
  - (3) violates a prohibition established by §454.053;
  - (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
  - (5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.
- (b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.
- (c) If the coordinator of occupational therapy programs has knowledge that a potential ground for removal exists, the coordinator shall notify the presiding officer of the board of the ground. The presiding officer shall then notify the governor that a potential ground for removal exists.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

#### **§454.056. PER DIEM; REIMBURSEMENT.**

- (a) A member of the board is entitled to a per diem as set by the General Appropriations Act for each day the member engages in board business.
- (b) A member may receive reimbursement for meals, lodging, and transportation expenses as provided by the General Appropriations Act.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.212(a), eff. Sept. 1, 2001.*

#### **§454.057. OFFICERS.**

After the appointment of members every two years, the members of the board shall elect from among its members a presiding officer, a secretary, and other officers required to conduct the business of the board.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*



**§454.058. MEETINGS.**

- (a) The board shall hold at least two regular meetings each year.
- (b) Additional meetings may be held on the call of the presiding officer or on the written request of three members of the board.
- (c) The coordinator of occupational therapy programs shall keep a record of each meeting of the board. The record must be open to public inspection at all times.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**§454.059. TRAINING.**

- (a) Before a member of the board may assume the member's duties, the member must complete at least a course of the training program established by the board under this section.
- (b) The training program shall provide information to a participant regarding:
  - (1) this chapter;
  - (2) the programs operated by the board;
  - (3) the role and functions of the board;
  - (4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;
  - (5) the current budget for the board;
  - (6) the results of the most recent formal audit of the board;
  - (7) the requirements of Chapters 551, 552, 2001, and 2002, Government Code;
  - (8) the requirements of the conflict of interest laws and other laws relating to public officials; and
  - (9) any applicable ethics policies adopted by the board or the Texas Ethics Commission.
- (c) In developing the training requirements provided for by this section, the board shall consult with the governor's office, the attorney general's office, and the Texas Ethics Commission.
- (d) If another state agency or entity is given the authority to establish the training requirements, *the board shall allow that training instead of developing its own program.*

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**§454.060. CIVIL LIABILITY.**

A member of the board is not liable in a civil action for an act performed in good faith while performing duties as a board member.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**SUBCHAPTER C. POWERS AND DUTIES****§454.101. GENERAL POWERS AND DUTIES.**

Except as provided by Chapter 452, the board shall administer and enforce this chapter.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**§454.102. RULES.**

The board shall adopt rules consistent with this chapter to carry out its duties in administering this chapter.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**§454.103. RULES REGARDING ADVERTISING OR COMPETITIVE BIDDING.**

- (a) The board may not adopt rules restricting advertising or competitive bidding by a person regulated by the board except to prohibit false, misleading, or deceptive practices by the person.
- (b) The board may not include in rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:
  - (1) restricts the use of any medium for advertising;
  - (2) restricts the person's personal appearance or use of the person's voice in an advertisement;
  - (3) relates to the size or duration of an advertisement by the person; or
  - (4) restricts the person's advertisement under a trade name.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**§454.104. FEES.**

- (a) The board may recommend to the executive council reasonable and necessary fees for licenses issued or services performed under this chapter that in the aggregate provide sufficient revenue to cover the cost of administering this chapter.
- (b) The board may not recommend to the executive council a fee that existed on September 1, 1993, for an amount less than the amount of the fee on that date.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**§454.105. EMPLOYEES; DIVISION OF RESPONSIBILITIES.**

- (a) The board may request the executive council to assign administrative and clerical employees as necessary to carry out the board's functions.
- (b) The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the executive council.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**§454.106. LIST OF LICENSE HOLDERS.**

- (a) The coordinator of occupational therapy programs shall maintain a list of the names of each person licensed under this chapter.
- (b) The list shall be open to public inspection at all times.
- (c) On March 1 of each year, the coordinator of occupational therapy programs shall transmit an official copy of the list to the executive council.
- (d) A certified copy of the list is admissible as evidence in a court of this state.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.213(a), eff. Sept. 1, 2001.*

**§454.107. BOARD DUTIES REGARDING COMPLAINTS.**

- (a) The board by rule shall:
  - (1) adopt a form to standardize information concerning complaints made to the board; and
  - (2) prescribe information to be provided to a person when the person files a complaint with the board.
- (b) The board shall provide reasonable assistance to a person who wishes to file a complaint.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**SUBCHAPTER D. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES****§454.151. PUBLIC INTEREST INFORMATION.**

- (a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board.
- (b) The board shall make the information available to the public and appropriate state agencies.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**§454.152. RECORD OF COMPLAINTS.**

- (a) The board shall keep an information file about each complaint filed with the executive council and referred to the board. The board's information file shall be kept current and contain a record for each complaint of:
  - (1) each person contacted in relation to the complaint;
  - (2) a summary of findings made at each step of the complaint process;
  - (3) an explanation of the legal basis and reason for a complaint that is dismissed;
  - (4) the schedule required under Section 454.153 and a notation about a change in the schedule; and
  - (5) other relevant information.
- (b) If a written complaint is received by the board that the board has authority to resolve, the board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**§454.153. GENERAL RULES INVOLVING COMPLAINT INVESTIGATION AND DISPOSITION.**

- (a) The board shall adopt rules relating to the investigation of a complaint received by the board. The rules shall:

- (1) distinguish between categories of complaints;
  - (2) ensure that complaints are not dismissed without appropriate consideration;
  - (3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;
  - (4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint;
  - (5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator; and
  - (6) require the board to advise the executive council of complaints that have been disposed of.
- (b) The board shall:
- (1) dispose of each complaint in a timely manner; and
  - (2) establish a schedule for conducting each phase of an investigation of a complaint that is under the control of the board not later than the 30th day after the date the board receives the complaint.
- (c) Each party shall be notified of the projected time requirements for the complaint.
- (d) Each party to the complaint must be notified of a change in the schedule not later than the seventh day after the date the change is made.
- (e) The coordinator of occupational therapy programs shall notify the board of a complaint that extends beyond the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

#### **§454.154. PUBLIC PARTICIPATION.**

- (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.
- (b) The board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the board's programs.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

### **SUBCHAPTER E. LICENSE REQUIREMENTS; REGISTRATION OF FACILITIES**

#### **§454.201. LICENSE REQUIRED; USE OF TITLE.**

- (a) A person may not practice occupational therapy or practice as an occupational therapy assistant unless the person is an individual licensed under this chapter.
- (b) A person who is not licensed under this chapter as an occupational therapist or an occupational therapy assistant or whose license has been suspended or revoked may not:
- (1) use in connection with the person's practice or place of business:
    - (A) the words "occupational therapy," "occupational therapist," "licensed occupational therapist," "occupational therapist registered," "occupational

- therapy assistant," "licensed occupational therapy assistant," or "certified occupational therapy assistant";
- (B) the letters "O.T.," "O.T.R.," "L.O.T.," "O.T.R./L.," "O.T.A.," "L.O.T.A.," or "C.O.T.A."; or
  - (C) any other words, letters, abbreviations, or insignia indicating or implying that the person is an occupational therapist or an occupational therapy assistant;
- (2) in any way directly or by implication represent that the person is an occupational therapist or an occupational therapy assistant; or
  - (3) in any way directly or indirectly represent that occupational therapy is provided, or extend or provide occupational therapy services unless the services are provided by an occupational therapist or an occupational therapy assistant.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

#### **§454.202. APPLICATION.**

- (a) An applicant for an occupational therapist license or an occupational therapy assistant license must submit to the board a written application on a form provided by the board, showing to the satisfaction of the board that the applicant meets the requirements of §454.203.
- (b) The board shall approve applicants for licenses at least once each year at reasonable times and places designated by the board.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

#### **§454.203. QUALIFICATIONS FOR OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT LICENSE.**

- (a) An applicant for an occupational therapist license or an occupational therapy assistant license must present evidence satisfactory to the board that the applicant has:
  - (1) successfully completed the academic requirements of an educational program in occupational therapy recognized by the board, as provided by §454.204;
  - (2) successfully completed a period of supervised field work experience arranged by the recognized educational institution at which the applicant met the academic requirements; and
  - (3) passed an examination as provided by Section 454.207.
- (b) To satisfy the supervised field work experience required by Subsection (a)(2):
  - (1) an occupational therapist must have completed a period of at least six months; and
  - (2) an occupational therapy assistant must have completed a period of at least two months.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

#### **§454.204. EDUCATIONAL REQUIREMENTS.**

To satisfy Section 454.203(a)(1):

- (1) an applicant applying for an occupational therapist license must have, from a program approved by the Accreditation Council for Occupational Therapy Education, its predecessor organization, or another national credentialing agency

approved by the board:

- (A) a baccalaureate degree in occupational therapy, if the applicant graduated before January 1, 2007;
  - (B) a certificate evidencing successful completion of required undergraduate occupational therapy course work awarded to persons with a baccalaureate degree that is not in occupational therapy, if the applicant graduated before January 1, 2007; or
  - (C) a postbaccalaureate degree in occupational therapy; and
- (2) an applicant applying for an occupational therapy assistant license must have:
- (A) an associate degree in occupational therapy; or
  - (B) an occupational therapy assistant certificate.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2009, 81st Leg., R.S., Ch. 401, Sec. 1, eff. June 19, 2009.*

#### **§454.205. FOREIGN-TRAINED APPLICANTS.**

- (a) To obtain a license under this chapter, an applicant who is foreign-trained must satisfy the examination requirements of §454.203(a)(3).
- (b) Before allowing the applicant to take the examination, the board shall require the applicant to furnish proof of:
  - (1) good moral character; and
  - (2) completion of the educational and supervised field work requirements substantially equal to those under §454.203.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

#### **§454.206. APPLICATION FOR EXAMINATION.**

- (a) A person must satisfy the requirements of §454.202(a) and §454.203(a)(1) and (2) before the person may apply for the examination.
- (b) The board shall prescribe the manner in which the person may apply for the examination.
- (c) The application must be accompanied by a nonrefundable fee prescribed by the executive council.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999*

#### **§454.207. LICENSE EXAMINATION.**

- (a) The board shall examine each applicant for a license by written examination to test the applicant's knowledge of the basic and clinical sciences relating to occupational therapy, occupational therapy techniques and methods, and other subjects the board may require to determine the applicant's fitness to practice.
- (b) The board shall examine applicants for licenses at least twice each year at the board's regular meetings and under the supervision required by the board.
- (c) The board shall:
  - (1) approve an examination for:
    - (A) occupational therapists; and
    - (B) occupational therapy assistants;
  - (2) establish standards for acceptable performance; and
  - (3) have the written portion of the examination validated by an independent testing

entity.

- (d) The board shall give reasonable public notice of the examination in accordance with its rules.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

#### **§454.208. EXAMINATION RESULTS.**

- (a) The board shall notify each examinee of the results of the licensing examination not later than the 30th day after the date the examination is administered. If an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination not later than the 14th day after the date the board receives the results from the testing service.
- (b) If the notice of the examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the board shall notify each examinee of the reason for the delay before the 90th day.
- (c) An applicant may obtain the applicant's examination score and review the applicant's papers in accordance with rules adopted by the board. If requested in writing by a person who fails a licensing examination, the board shall furnish the person with an analysis of the person's performance on the examination.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

#### **§454.209. REEXAMINATION.**

- (a) An applicant who fails an examination given by the board may take a second examination on payment of the prescribed fees.
- (b) An applicant who fails the second examination may take a third examination after a specific period of not longer than one year if the applicant meets the requirements prescribed for previous examinations.
- (c) An applicant who fails the third examination may take additional tests at the board's discretion.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

#### **§454.210. PROVISIONAL LICENSE.**

- (a) On application, the board shall issue a provisional license for the practice of occupational therapy to an applicant who:
  - (1) is licensed in good standing as an occupational therapist or occupational therapy assistant in another state that has licensing requirements that are substantially equivalent to the requirements of this chapter; and
  - (2) has passed a national examination or other examination recognized by the board relating to the practice of occupational therapy.
- (b) A provisional license is valid until the date the board approves or denies the provisional license holder's application for an occupational therapist or occupational therapy assistant license.
- (c) The board shall issue an occupational therapist or occupational therapy assistant license to the provisional license holder if:
  - (1) the provisional license holder passes a jurisprudence examination, if required;

- (2) the board verifies that the provisional license holder has the academic and experience requirements for an occupational therapist or occupational therapy assistant license; and
- (3) the provisional license holder satisfies any other requirements for an occupational therapist or occupational therapy assistant license.
- (d) The board must complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend that deadline if the results of an examination have not been received by the board.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.214(a), eff. Sept. 1, 2001.*

#### **§454.211. TEMPORARY LICENSE.**

- (a) The board by rule may provide for the issuance of a temporary license.
- (b) The holder of a temporary license must practice under the supervision of an occupational therapist.
- (c) A rule adopted under this section must include a time limit for a person to hold a temporary license.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

#### **§454.212. INACTIVE STATUS.**

- (a) The board by rule may provide for a license holder to place the holder's license under this chapter on inactive status.
- (b) A rule adopted under this section must include a time limit for a license holder's license to remain on inactive status.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

#### **§454.213. ACCEPTED PRACTICE; PRACTITIONER'S REFERRAL.**

- (a) An occupational therapist may enter a case to:
  - (1) provide consultation and monitored services; or
  - (2) evaluate a person for the need for services.
- (b) Implementation of direct occupational therapy to a person for a specific health care condition must be based on a referral from:
  - (1) a physician licensed by a state board of medical examiners;
  - (2) a dentist licensed by a state board of dental examiners;
  - (3) a chiropractor licensed by a state board of chiropractic examiners;
  - (4) a podiatrist licensed by a state board of podiatric medical examiners; or
  - (5) another qualified, licensed health care professional who is authorized to refer for health care services within the scope of the professional's license.
- (c) The professional who takes action under this section is a referring practitioner.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.215(a), eff. Sept. 1, 2001.*



**§454.214. DISPLAY OF LICENSE AND RENEWAL CERTIFICATE.**

A license holder under this chapter shall display the license holder's license and renewal certificate in a conspicuous place in the principal office in which the license holder practices occupational therapy.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**§454.215. OCCUPATIONAL THERAPY FACILITY REGISTRATION.**

- (a) The board by rule shall adopt requirements for the registration and renewal of a registration of a facility in which the practice of occupational therapy is conducted. A facility licensed under Subtitle B, Title 4, Health and Safety Code, is exempt from the registration requirements under this section. The board by rule may exempt other facilities as appropriate.
- (b) If a person owns more than one occupational therapy facility, the board may require only one application for the registration of all facilities.
- (c) The board by rule shall adopt a procedure whereby an occupational therapy facility may apply for exemption from any registration fees under this section.
- (d) A facility may not represent that it offers occupational therapy services unless it employs the services of a license holder under this chapter.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**SUBCHAPTER F. LICENSE RENEWAL****§454.251. LICENSE EXPIRATION.**

- (a) The board by rule may adopt a system under which licenses expire on various dates during the year.
- (b) For the term in which the license expiration date is changed, license fees shall be prorated on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**§454.252. RENEWAL OF LICENSE.**

- (a) A person may renew an unexpired license by paying the required renewal fee to the executive council before the expiration date of the license.
- (b) A person whose license has been expired for 90 days or less may renew the license by paying to the executive council the renewal fee and a late fee set by the executive council that may not exceed one-half of the examination fee for the license. If a person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the executive council all unpaid renewal fees and a late fee set by the executive council that may not exceed the amount charged for

- examination for the license.
- (c) A person whose license has been expired for one year or longer must comply with the board's requirements and procedures to reinstate the license, and pay a reinstatement fee set by the executive council. If the board requirements cannot be met, the person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.
  - (d) At least 30 days before the expiration of a person's license, the executive council shall send written notice of the impending license expiration to the license holder at the person's last known address.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2009, 81st Leg., R.S., Ch. 401, Sec. 2, eff. June 19, 2009.*

#### **§454.253. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER.**

- (a) The board may renew without reexamination the expired license of a person who was licensed to practice as an occupational therapist or occupational therapy assistant in this state, moved to another state, is currently licensed and in good standing in the other state, and meets the board's requirements.
- (b) The person must pay to the executive council a renewal fee set by the executive council in an amount that may not exceed the examination fee for the license.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2009, 81st Leg., R.S., Ch. 401, Sec. 3, eff. June 19, 2009.*

#### **§ 454.254. MANDATORY CONTINUING EDUCATION.**

- (a) The board by rule shall:
  - (1) assess the continuing education needs of license holders;
  - (2) establish a minimum number of hours of continuing education required to renew a license; and
  - (3) develop a process to evaluate and approve continuing education courses.
- (b) The board may require license holders to attend continuing education courses specified by the board. The board shall adopt a procedure to assess a license holder's participation in continuing education programs.
- (c) The board shall identify the key factors for the competent performance by a license holder of the license holder's professional duties.
- (d) In adopting rules under Subsection (a)(3), the board may authorize license holder peer organizations in this state to evaluate and approve continuing education courses in accordance with the board's evaluation and approval process.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 166, Sec. 1, eff. May 18, 2001. Amended by: Acts 2009, 81st Leg., R.S., Ch. 401, Sec. 4, eff. June 19, 2009.*

### **SUBCHAPTER G. DISCIPLINARY ACTION AND PROCEDURE**

#### **§454.301. GROUNDS FOR DENIAL OF LICENSE OR DISCIPLINE OF LICENSE HOLDER.**

- (a) The board may deny, suspend, or revoke a license or take other disciplinary action against a license holder if the applicant or license holder has:

- (1) used drugs or intoxicating liquors to an extent that affects the applicant's or license holder's professional competence;
  - (2) been convicted of a crime, other than a minor offense defined as a "minor misdemeanor," "violation," or "offense," in any court if the act for which the applicant or license holder was convicted is determined by the board to have a direct bearing on whether the applicant or license holder should be entrusted to serve the public in the capacity of an occupational therapist or occupational therapy assistant;
  - (3) obtained or attempted to obtain a license by fraud or deception;
  - (4) been grossly negligent in the practice of occupational therapy or in acting as an occupational therapy assistant;
  - (5) been found mentally incompetent by a court;
  - (6) practiced occupational therapy in a manner detrimental to the public health and welfare;
  - (7) advertised in a manner that in any way tends to deceive or defraud the public;
  - (8) had a license to practice occupational therapy revoked or suspended or had other disciplinary action taken against the applicant or license holder by the proper licensing authority of another state, territory, or nation; or
  - (9) had the applicant's or license holder's application for a license refused, revoked, or suspended by the proper licensing authority of another state, territory, or nation.
- (b) If a license suspension is probated, the board may require the license holder to:
- (1) report regularly to the board on matters that are the basis of the probation;
  - (2) limit practice to the areas prescribed by the board; or
  - (3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

#### **§454.302. PROCEDURES FOR DISCIPLINARY ACTION; SCHEDULE OF SANCTIONS.**

- (a) Proceedings for disciplinary action against a license holder and appeals from those proceedings are governed by Chapter 2001, Government Code.
- (b) After a hearing by the State Office of Administrative Hearings, the board may deny or refuse to renew a license, suspend or revoke a license, reprimand a license holder, or impose probationary conditions.
- (c) The State Office of Administrative Hearings shall use the schedule of sanctions adopted by the board by rule for a sanction imposed as the result of a hearing conducted by the office.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999*

#### **§454.303. ISSUANCE OF LICENSE AFTER DENIAL; REISSUANCE OF LICENSE.**

On application by the person, the board may issue a license to a person whose license has been denied or reissue a license to a person who has been disciplined by the board. The application:

- (1) may not be made before the 180th day after the date the denial or discipline order became final; and

- (2) must be made in the manner and form the board requires.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

#### **§454.304. INFORMAL PROCEEDINGS.**

- (a) The board by rule shall adopt procedures governing:
- (1) informal disposition of a contested case under Section 2001.056, Government Code; and
  - (2) informal proceedings held in compliance with Section 2001.054, Government Code.
- (b) A rule adopted under this section must:
- (1) provide the complainant and the license holder an opportunity to be heard; and
  - (2) require the presence of the board's legal counsel or a representative of the attorney general to advise the board or the board's employees.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

#### **§454.305. EMERGENCY SUSPENSION.**

- (a) The board may temporarily suspend a license issued under this chapter on an emergency basis if the board determines that the continued practice by the license holder constitutes a continuing or imminent threat to the public health or welfare.
- (b) A temporary suspension under this section requires a two-thirds vote by the board.
- (c) A license temporarily suspended under this section may be suspended without notice or hearing if, at the time the suspension is ordered, a hearing on whether to institute a disciplinary proceeding against the license holder is scheduled to be held not later than the 14th day after the date of the temporary suspension. A second hearing on the suspended license must be held not later than the 60th day after the date the temporary suspension was ordered. If the second hearing is not held within the required time, the suspended license is automatically reinstated.
- (d) The board shall adopt rules that establish procedures and standards for the temporary suspension of a license under this section.

*Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.216(a), eff. Sept. 1, 2001.*

#### **§454.306. SUBPOENA.**

- (a) The board may request or compel by subpoena:
- (1) the attendance of a witness for examination under oath; and
  - (2) the production for inspection and copying of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter.
- (b) If a person fails to comply with a subpoena issued under this section, the board, acting through the attorney general, may bring an action to enforce the subpoena in a district court in Travis County or in a county in which a hearing conducted by the board may be held. If the court determines that good cause exists for the subpoena, the court shall order compliance. The court may punish for contempt a person who does not obey the order.

*Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.217(a), eff. Sept. 1, 2001.*

## **SUBCHAPTER H. PENALTIES AND ENFORCEMENT PROCEDURES**

### **§454.351. INJUNCTIVE RELIEF.**

The attorney general, a district attorney, a county attorney, or any other person may institute a proceeding to enforce this chapter, including a suit to enjoin a person from practicing occupational therapy without complying with this chapter.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

### **§454.352. MONITORING OF LICENSE HOLDER.**

The board by rule shall develop a system for monitoring a license holder's compliance with this chapter. The rules must include procedures for:

- (1) monitoring for compliance a license holder who is ordered by the board to perform a certain act; and
- (2) identifying and monitoring each license holder who represents a risk to the public.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

### **§454.3521. ADMINISTRATIVE PENALTY.**

- (a) The board may impose an administrative penalty against a person licensed or facility registered under this chapter who violates this chapter or a rule or order adopted under this chapter.
- (b) The penalty may not exceed \$200, and each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. The amount of the penalty shall be based on:
  - (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;
  - (2) the history of previous violations;
  - (3) the amount necessary to deter a future violation;
  - (4) efforts to correct the violation; and
  - (5) any other matter that justice requires.
- (c) The person may stay enforcement during the time the order is under judicial review if the person pays the penalty to the court clerk or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay enforcement by filing an affidavit like that required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, except that the board may contest the affidavit as provided by those rules.
- (d) A proceeding to impose an administrative penalty is subject to Chapter 2001, Government Code.

*Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.218(a), eff. Sept. 1, 2001.*

### **§454.353. CIVIL PENALTY.**

- (a) A person found by a court to have violated this chapter is liable to this state for a civil

penalty of \$200 for each day the violation continues.

- (b) A civil penalty may be recovered in a suit brought by the attorney general, a district attorney, a county attorney, or any other person.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

#### **§454.354. RECOVERY OF COSTS AND FEES.**

A person other than the attorney general, a district attorney, or a county attorney who brings an action to enforce this chapter or for injunctive relief may recover the person's court costs and attorney's fees.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

#### **§454.355. CRIMINAL OFFENSE.**

- (a) A person commits an offense if the person knowingly violates this chapter.
- (b) An offense under this section is a Class A misdemeanor.
- (c) Each day of violation constitutes a separate offense.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*